DOCUMENT RESUME

ED 380 924 EC 303 798

TITLE	Rights and Responsibilities of Employees with Disabilities on the Job. Creating Employment Opportunities Project.
INSTITUTION	Missouri Univ., Columbia. Dept. of Special Education.
SPONS AGENCY	Office of Special Education and Rehabilitative Services (ED), Washington, DC.
PUB DATE	94
CONTRACT	H078C20011-92
NOTE	14p.; A product of the Center for Innovations in Special Education.
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Adults; Civil Rights; *Civil Rights Legislation; *Disabilities; Disability Discrimination; Employment Opportunities; *Equal Opportunities (Jobs); Federal Legislation; *Job Application; Labor Legislation; Self Disclosure (Individuals)
IDENTIFIERS	*Americans with Disabilities Act 1990; Job Accommodations (Disabilities)

ABSTRACT

This pamphlet, designed to assist people with disabilities in the job search process, discusses Title I of the Americans with Disabilities Act (ADA) and job search issues. The ADA's definitions and protections are outlined, and the types of employers covered under the ADA are noted. The pamphlet emphasizes that the ADA is not affirmative action legislation but civil rights legislation. It discusses the job applicant's rights concerning confidentiality, accommodation, job program accessibility, and insurance. It answers questions concerning disclosure of the disability, determination of the type of accommodation needed, and procedures for filing discrimination complaints. (JDD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

SCOPE OF INTEREST NOTICE

The ERIC Facility has assigned this document for processing to:

In our judgment, this document is also of interest to the Clearinghouses noted to the right. Indexing should reflect their special points of view.

Creating Employment Opportunities Project

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

( ) This document has been reproduced as received from the person or organization originating it.

( ) Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

ED 380 924

Rights and Responsibilities of Employees With Disabilities on the Job

EC 303 798

CENTER FOR INNOVATIONS IN SPECIAL EDUCATION

an equal opportunity/ADA institution

This document was produced by the Creating Employment Opportunities Project (CEO) in cooperation with the Center for Innovations in Special Education at the University of Missouri-Columbia. The CEO Project is a three-year federally funded grant project that develops materials and provides training for postsecondary faculty and staff who work with students with disabilities. This Project is funded through the College of Education (Special Education) at the University of Missouri, and the Office of Special Educational Rehabilitation Services (OSERS).

This document was supported by a grant to the University of Missouri-Columbia, College of Education, Department of Special Education, from the Department of Education, Office of Special Educational Rehabilitation Services, Project #H078C20011-92. However, the opinions expressed herein do not necessarily reflect the position or policies of the funding agency or host institution.

Permission to duplicate this publication is granted by CEO, contingent upon CEO and the Editor being given credit for its development.

For further information, contact:

Martha Wille Gregory, CEO Coordinator
Center for Innovations in Special Education
Parkade Center, Suite 152
601 Business Loop 70 West
Columbia, MO 65211
(314) 884-7275
(800) 976-2473 (Missouri only)

1994

*** RIGHTS AND RESPONSIBILITIES OF EMPLOYEES WITH DISABILITIES ON THE JOB

This handbook was designed to assist people with disabilities in their job search. This handbook discusses the Americans with Disabilities Act (ADA) Title I and job search issues such as disclosure of a disability and accomodations. While every effort has been made to insure completeness and accuracy, this is not a legal document nor does it purport to offer legal opinions.

This handbook provides general information to assist people with disabilities. Any opinion or interpretation in the document are those of the author and do not necessarily reflect the views of the enforcing agencies.

INTRODUCTION

In 1990, the Americans with Disabilities Act (ADA) became law. The ADA makes it unlawful to discriminate against a qualified individual with a disability in employment areas such as state and local governments, telecommunications, public accommodations, and transportation.

This handbook will address Title I of the ADA which prohibits discrimination in the employment setting.

LEGISLATION

*** What is the ADA?

The ADA is a federal civil rights statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.

***WHAT ARE THE BASIC DEFINITIONS UNDER THE ADA?

A **Qualified Individual** with a disability under the ADA means the individual satisfies the employer's requirements for the job, such as education, employment experience, skills, or licenses, and who can perform the essential function(s) of such a position with or without a reasonable accommodation.

An **Essential Function** of a job means the fundamental job duties of an employment position. A job function may be considered essential for any of several reasons, including (but not limited to) the following:

- the position exists to perform that function;
- a limited number of employees are available among whom the performance of that job function can be distributed; and/or
- it may be highly specialized so that the person in the position is hired for his or her expertise or ability to perform the particular function.

A **Reasonable Accommodation** is any adjustment to a position or work environment that permits a qualified applicant or employee with a disability to participate in the application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

Examples of reasonable accommodations might be:

- job restructuring,
- part-time or modified work schedules,
- reassignment to a vacant position,
- providing or modifying equipment or devices,
- readers or interpreters,
- modifying or adjusting policies, training materials, or examinations.

An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an **undue hardship**. An undue hardship means a significant difficulty or expense in, or resulting from, the provision of the accommodation for the person with a disability, or would fundamentally alter the nature or operation of its business.

An employer cannot refuse an applicant because they consider the potential employee to be a "direct threat." This means the individual poses a "direct threat" to the health or safety of themselves or others.

***** AM I PROTECTED UNDER THE ADA?**

If you have a disability and are qualified to do a job, the ADA protects you from discrimination in your employment setting on the basis of your disability. The definition of a disability under the ADA is:

1. a physical or mental impairment that substantially limits a major life activity;
2. a record of such an impairment; or,
3. the applicant or employee is regarded as having such an impairment, even if they do not.

A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, walking, breathing, performing manual tasks, caring for oneself, learning, or working.

If you have a disability, you must be "qualified" to perform the essential function(s) or duties of a job, with or without a reasonable accommodation, to be protected from employment discrimination under the ADA.

***** WHAT EMPLOYERS ARE COVERED UNDER THE ADA?**

Employers are covered under the ADA if they fall into the following categories:

- private employers.
- state and local governments.
- employment agencies.
- labor organizations, and
- labor-management committees.

The Equal Employment Opportunity Commission (EEOC) prohibits job discrimination by all employers with 15 or more employees, including state and local government employers, after July 26, 1994.

Another part of the ADA, Title II, enforced by the U.S. Department of Justice (DOJ), prohibits job discrimination in state and local government programs and activities, regardless of the number of employees, after January 25, 1992.

***** CAN AN EMPLOYER HIRE OTHER QUALIFIED APPLICANTS WITHOUT DISABILITIES OVER ME?**

Yes. The ADA does not require that an employer hire an applicant based on his or her having a disability. The ADA only prohibits discrimination on the basis of a disability. The ADA is not affirmative action legislation, but civil rights legislation.

***** CAN I EXPECT THE EMPLOYER NOT TO FIRE OR DISCIPLINE ME BECAUSE I HAVE A DISABILITY?**

No. ADA does not require the employer to give "special treatment" of poor performance based on your having a

disability. An employer has the right to expect all employees to be on time, complete assignments, and perform job duties. For example, the company discipline policy should be enforced for a person with or without a disability who is continuously late to work.

Rights

***** WHAT RIGHTS DO I HAVE REGARDING CONFIDENTIALITY?**

It is illegal for the employer to disclose any information regarding your disability gained from medical examination or other post-offer inquiries. Title I of the ADA has very strict guidelines on how confidentiality should be enforced:

- Information regarding your disability must be kept on separate forms and in separate files from general personnel information.

- Information concerning your disability may be shared, on a need-to-know basis, with the following people: managers or supervisors directly related to the situation and only regarding necessary accommodations. First aid and safety personnel may be notified for emergency purposes. Government officials investigating compliance with nondiscrimination laws, worker's compensation officials, and insurance companies (when the company requires a medical examination to provide insurance to employees).

***** WHAT RIGHTS DO I HAVE FOR AN ACCOMMODATION?**

The employer must provide a reasonable accommodation as long as it does not prove to be an undue hardship.

***** WHAT AM I ENTITLED TO IN TERMS OF JOB PROGRAM ACCESSIBILITY?**

Under the ADA, the requirement to provide reasonable accommodations covers all services, programs, and non-work related facilities provided by the employer. If making an existing facility accessible would be an undue hardship, the employer must provide a comparable facility that will enable a person with a disability to enjoy similar benefits and privileges of employment to those enjoyed by other employees, unless to do so would be an undue hardship.

***** WHAT RIGHTS DO I HAVE CONCERNING INSURANCE?**

The employer does not have to provide additional insurance for employees with disabilities. The employer only has to provide equal access to whatever health insurance coverage is provided to other employees. An employer can offer a health insurance policy that excludes coverage for pre-existing conditions.

JOB SEARCH

***** SHOULD I TELL MY EMPLOYER I HAVE A DISABILITY?**

If you think you will need a reasonable accommodation to participate in the application process or to perform essential job functions, you should inform the employer that an accommodation will be needed. Employers are required to provide reasonable accommodations only when they are aware of the existence of a disability. Generally, it is the responsibility of the applicant or employee to inform the employer that an accommodation is needed.

*** WHEN SHOULD I DISCLOSE MY DISABILITY IN THE EMPLOYMENT SEARCH PROCESS?

Disclosing a disability is a personal choice. It is important to look at the pros and cons of when and how to disclose your disability. Generally, it is not recommended to disclose a disability on your application or resume. Under the ADA, it is illegal to ask for personal information such as disability. Many applicants will choose to disclose their disability prior to the job interview and others will wait until the job interview. It is important, whenever you decide to disclose your disability, that you have rehearsed it thoroughly and emphasized your strengths rather than your weaknesses. It is also important not to dwell on your disability, but emphasize what you can do. Additionally, it is important not to exaggerate what you can do, but be honest regarding your abilities. You should also be prepared to talk about your disability at the interview and to attempt to make the employer comfortable with your disability. Be prepared to discuss needed accommodations.

If you have an invisible disability that does not affect the job and no accommodation is needed, or you have a record of a disability, but you no longer have a disability, you may not want to disclose. It is important to consider the pros and cons of how and whether to disclose your disability.

*** HOW DO I KNOW WHAT TYPE OF ACCOMMODATION I NEED?

It is important, even before you get to the interview process, that you investigate possible accommodation needs for the job for which you are applying. You cannot expect the employer will know abou' your accommodation needs. An employer must provide an effective accommodation, not necessarily the one that you requested.

If you are uncertain about accommodations, two good resources are the Job Accommodations Network (JAN), (800) 526-7234, or the Missouri Assistive Technology Project, (800) 647-8557 (V) or (800) 647-8558 (TDD). The Job Accommodations Network provides technical assistance concerning job accommodations, while the Missouri Assistive Technology Project provides technical support on assistive equipment.

Responsibilities

*** WHAT DO I NEED TO DO BEFORE I BEGIN MY EMPLOYMENT SEARCH?

When beginning your employment search, it is important to:

- investigate areas of interest,
- learn about possible career choices as early as possible,
- research any job accommodations that may be needed, such as cost, and be prepared to discuss the information,
- think about how and whether to disclose your disability,
- know your strengths and weaknesses,
- be able to talk about your disability, and
- learn how to self-advocate.

*** WHAT DO I DO IF I THINK I HAVE BEEN DISCRIMINATED AGAINST?

If you think you have been discriminated against because of your disability in an employment setting, you should contact the Equal Employment Opportunity Commission (EEOC). Keep in mind that documentation is imperative. Make specific notes about any suspect situations listing dates, names, and description of alleged discrimination. A charge of discrimination generally must be filed within 180 days of the alleged discrimination. You may have up to 300 days to

file a charge if there is a state or local law that provides relief for discrimination on the basis of disability. However, to protect your rights, it is best to contact EEOC quickly if you suspect discrimination.

***** WHAT RESOURCES ARE AVAILABLE TO ASSIST ME?**

Below is a list of possible resources to assist in your job search:

National Resources

Office on the ADA
Civil Rights Division
P.O. Box 66118
U.S. Department of Justice
Washington, DC 20035-6118

Equal Employment
Opportunity Commission
1801 L Street, NW
Washington, DC 20507
(202) 663-4900 (V)
(800) 800-3302 (TDD)

Architectural &
Transportation
Barriers Compliance Board
1111 18th Street NW Ste.
501
Washington, DC 20036
(800) USA-ABLE (V/TDD)

Federal Communications
Commission (FCC)
1919 M Street NW
Washington, DC 20554
(202) 632-7260 (V)
(202) 632-6999 (TDD)

Department of Transportation
400 Seventh Street NW
Washington, DC 20590
(202) 366-9305 (V)
(202) 755-7687 (TDD)

Job Accommodation Network
(JAN)
(800) 526-7234

Regional Resources

Missouri Assistive
Technology Project
4731 South Cochise, Ste.
114
Independence, MO 64055-
6975
(800) 647-8557 (V)
(800) 647-8558 (TDD)

The ADA Project
4816 Santana Circle
Columbia, MO 65203
(314) 882-3600 (V/TDD)
(800) 949-4232 (V/TDD)

Governor's Council on
Disability
3315 W. Truman Boulevard
Jefferson City, MO 65109
(314) 751-2600 (V/TDD)
(800) 877-8249 (V/TDD)

References

Gregory, M.W., ed. (1993). Accessibility and accommodations training manual. Columbia, MO: University of Missouri-Columbia, Creating Employment Opportunities Project.

U.S. Equal Employment Opportunity Commission. (1991). The Americans with disabilities act: Your employment rights as an individual with a disability. Washington, DC: Author.

U.S. Equal Employment Opportunity Commission, & U.S. Department of Justice. (1991). Americans with disabilities act handbook. Washington, DC: Author.